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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

FILIBERTO ALVAREZ,

Defendant and Appellant.

2d Crim. No. B268081
(Super. Ct. No. 2015009801)
(Ventura County)

Filiberto Alvarez appeals a judgment following his conviction for resisting an executive officer (Pen. Code, § 69) and possession of drug paraphernalia (Health & Saf. Code, § 11364, subd. (a)). We conclude substantial evidence supports the judgment. We affirm.

FACTS

Police Officer Jared Battles went to Alvarez's home with a warrant for Alvarez's arrest for a probation violation. Battles, who was in uniform, saw Alvarez outside the residence. He walked towards him and asked, "[A]re you Filiberto?" Alvarez

responded “maybe” and walked away. Battles told him to “stop” and that he was “with Probation.” Alvarez did not stop. He started “walking briskly” towards a van.

For “officer safety” reasons, Battles decided to prevent him from reaching the van. He testified, “I got to [Alvarez] at about the exact same time that he got to . . . the bumper of the van.” He grabbed Alvarez’s wrist. Alvarez grabbed the officer’s shirt and “tried to push” him “away.” He was physically “resisting.” Battles testified that Alvarez was “pushing [him] straight back towards the opening of the driveway.”

As they struggled holding “on to each other,” Battles eventually was able “to hold him” against a fence. When Battles tried to call for backup, Alvarez “grabbed on” to Battles’s shirt, grabbed his bullet proof vest, and pulled the badge off his uniform.

Alvarez held the badge in his hand with the “spike” of that badge “sticking straight out through his fingers.” Battles punched Alvarez on the chin because he feared Alvarez could use the sharp metal spike as a weapon. Alvarez dropped the badge; he was “bent over at the waist,” but he continued to resist. He wrapped his arm around Battles’s legs. Fearing he might fall, Battles tripped Alvarez, which caused Alvarez to fall to the ground. Battles “went down with him.” As they continued “wrestling,” Battles applied a “restraint” hold and handcuffed Alvarez. During a search of Alvarez, Battles found two methamphetamine pipes in his “right cargo shorts pocket.”

DISCUSSION

Substantial Evidence

Alvarez contends that “[t]he evidence was insufficient to establish the knowledge element for the crime of resisting an executive officer.” (Boldface omitted.) We disagree.

In reviewing the sufficiency of the evidence, we determine whether after viewing “the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” (*People v. Holt* (1997) 15 Cal.4th 619, 667.) We do not weigh the evidence or decide the credibility of the witnesses. We draw all reasonable inferences in favor of the judgment.

“Reversal on this ground is unwarranted unless it appears ‘that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].’” (*People v. Bolin* (1998) 18 Cal.4th 297, 331.)

Penal Code section 69, subdivision (a) provides, in relevant part, “Every person who . . . knowingly resists, by the use of force or violence, the officer, in the performance of his or her duty, is punishable by a fine . . . or by imprisonment” Conviction for this offense “requires actual knowledge on the part of the defendant that the person being resisted is an executive officer and that the officer is engaged in the performance of his/her duty.” (*People v. Hendrix* (2013) 214 Cal.App.4th 216, 237.) The People had to prove Alvarez knew Battles was a police officer who was performing his duty. (*Ibid.*)

Alvarez contends that “Battles grabbed [him] without identifying any purpose for his presence or his conduct” and he was “never put on notice that Battles was acting in the performance of his duty.” We disagree.

A trier of fact could reasonably find that Alvarez knew Battles was a police officer. When Battles approached Alvarez, he was wearing his police uniform. He was only 10 feet away when he asked Alvarez, “[A]re you Filiberto?” The uniform Battles wore had police “patches” and a badge. Battles was wearing a gun belt with a firearm, a taser, pepper spray, a baton, and he had a police radio. During the struggle, Alvarez held the police badge in his hand.

The jurors also could reasonably find that Alvarez knew Battles was there to perform his duty. There was a warrant for Alvarez’s arrest for a probation violation. Battles told him, “Stop, it’s okay, *I’m here with probation.*” (Italics added.) Jurors could reasonably find that statement informed Alvarez that Battles was there to perform official duty. Battles’s duties included working “with Probation.” He was required to conduct “searches and contact probationers.”

In addition, Alvarez’s conduct supported a reasonable inference that Alvarez knew why Battles was there. Probation Officer Daniel Baldwin testified that he advised Alvarez of the terms of his probation. He informed Alvarez that he was “subject to search or seizure by a police officer or probation officer at any time.” Alvarez had stopped coming to required meetings with his probation officer. When Battles approached and asked if he was Filiberto, Alvarez evasively answered “maybe,” and moved away towards the van. Alvarez was not “cooperating.” He physically resisted. The jury could find he had a motive for this evasive behavior and resistance. He possessed two “methamphetamine pipes.”

Alvarez claims some evidence supports reasonable inferences in his favor. But the issue on appeal is not whether

some evidence supports appellant, it is only whether substantial evidence supports the judgment. The evidence is sufficient.

DISPOSITION

The judgment is affirmed.

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GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

Gilbert A. Romero, Judge
Superior Court County of Ventura

Greg May, under appointment by the Court of
Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A.
Engler, Chief Assistant Attorney General, Lance E. Winters,
Senior Assistant Attorney General, Stephanie C. Brennan,
Supervising Deputy Attorney General, Charles S. Lee, Deputy
Attorney General, for Plaintiff and Respondent.